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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DENNIS LEE, Defendant and Appellant.	B206343 (Los Angeles County Super. Ct. No. NA075892)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph DiLoreto, Judge. Affirmed.

Mojgan Aghai, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillete, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Keith H. Borjon and John R. Gorey, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant and appellant Dennis Lee of second degree burglary of a motor vehicle. On appeal, defendant contends that there is insufficient evidence the vehicle was "locked," as required by Penal Code section 459.[1] We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background.

Heriberto Ramirez and his wife, Anna Munaz, have a minivan. The minivan has driver and passenger side doors, a sliding door on the right hand side, and two back doors. The lock on the back doors is a little "loose." Although Ramirez never tried to pull them open, he thinks that if a person pulled hard the back doors might open. Munaz said that the back doors will open if pulled really hard.

On August 26, 2007, Munaz, looked out her window at about 7:45 a.m. She saw a man tugging on the two back doors. Based on the man's movements, she assumed he was "using something or pulling." Munaz woke Ramirez. As Ramirez ran to the window, Munaz saw the man "pry" the doors open and crawl in. Ramirez looked out the window and saw the minivan's back doors open and a man get into the car. Ramirez ran downstairs. The man, defendant, was inside the minivan looking at tools Ramirez kept inside the car. Ramirez asked defendant what he was doing, and defendant replied that he was " 'sorry' " and " 'stupid.' " Ramirez told defendant to unlock the sliding door, which he did. When Ramirez told defendant that the police had been called, defendant tried to escape, but Ramirez restrained him.

The night before this incident, Ramirez had locked the minivan doors. Officer Xavier Veloz, who went to the scene, saw no obvious signs of forced entry. Ramirez told him the car had been locked but it was easy to open with any object similar in shape to the key. Officer Veloz was unable to open the back doors by pulling on them. The

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[1] All further undesignated statutory references are to the Penal Code.

officer did not recover any items from defendant that could have been used to open the car.

II. Procedural background.

Trial was by jury. Defendant's motion to dismiss under section 1118.1 on the ground that there was insufficient evidence the car was locked was denied. On February 13, 2008, the jury found defendant guilty of second degree burglary of a vehicle (§ 459). On February 26, 2008, the trial court sentenced defendant to the midterm of two years, doubled to four years based on a prior strike. The court also imposed three 1-year terms under section 667.5, subdivision (b).[2]

DISCUSSION

I. There is sufficient evidence that the minivan's doors were locked.

Defendant contends that the evidence is insufficient to support the jury's verdict he committed second degree burglary of a motor vehicle, because the vehicle was not "locked" as required by section 459. We disagree.

Section 459 provides: "Every person who enters any . . . vehicle as defined by the Vehicle Code, when the doors are locked, . . . with intent to commit grand or petit larceny or any felony is guilty of burglary." Under section 459, "[a]uto burglary can be committed only by entering a *locked* vehicle without the owner's consent." (*People v. Allen* (2001) 86 Cal.App.4th 909, 914 (*Allen*), italics added.) To determine whether the requirements of section 459 have been met, we apply a "liberal and commonsense approach." (*Id.* at p. 915.) And under the substantial evidence standard of review we determine whether there is "evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]" (*People v. Stanley* (1995) 10 Cal.4th 764, 792.)

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[2] The court imposed but stayed three additional one-year terms.

There is sufficient evidence here that the minivan's doors were locked, as required by section 459. Ramirez testified that the night before the break-in, he locked the minivan's doors. Munaz said she saw defendant "tugging" at the minivan's back doors and "prying" open the doors. Based on defendant's movements, it seemed to Munaz that defendant was using something to open the minivan. This evidence is more than sufficient to support the jury's conclusion that the minivan was "locked."

Defendant counters with evidence that although all of the vehicle's doors had locks, Ramirez and Munaz said that the lock on the back doors was "loose," and, if a person pulled hard enough on the back doors, they would open. Citing *Allen, supra*, 86 Cal.App.4th 909, and *In re Lamont R.* (1988) 200 Cal.App.3d 244, defendant thus argues that the minivan's doors were not locked for the purposes of section 459.

In *Allen*, the locks on the victim's car were broken. (*Allen, supra,* 86 Cal.App.4th at p. 912.) The trunk lock was also broken, but the trunk could be opened by pulling a latch located underneath the driver's side seat. (*Ibid.*) Defendant was seen getting out of the victim's car and looking into the now open trunk. Noting that the defendant did not use force or tools to open the car, but instead entered the vehicle through an unlocked door, thereby accessing the latch and opening the trunk, we found that no burglary under section 459 occurred. (*Id.* at pp. 916-917.) We also noted that the victim understood that the main compartment of his vehicle and the trunk were readily accessible to invasion; hence, it would have been unreasonable for the victim to believe the trunk was secure.

In *Allen*, we cited *In re Lamont R., supra,* 200 Cal.App.3d 244. In *Lamont*, a trailer's doors were secured by wrapping two "chains around each other and hook[ing] them into the hooks on opposite sides of the doors." (*Id*. at p. 246.) To open the doors, the defendant simply unhooked the chains, unfastened the latches and pulled open the door. (*Id.* at p. 247.) The court commented that section 459's requirement that a vehicle be locked reveals a legislative intent to make entry into a locked vehicle more serious than entry into an unlocked one. (*Lamont,* at p. 247.) To find that the "chain and hook contraption" constituted a lock would, the *Lamont* court said, do violence to the

legislative intent. In finding that the trailer was unlocked for the purposes of section 459. the court rejected the Attorney General's argument that "locked" should be interpreted to mean " 'secured insofar as possible.' " (*Id.* at p. 248.) "If such were the case any car door or trunk without a functioning lock would be deemed 'locked' merely by the owner's act of closing it." (*Ibid.*)

Neither *Allen* nor *Lamont* require us to rethink our conclusion that the minivan here was "locked," as required by section 459. Ramirez said it might be possible to open the back doors if a person pulled hard enough because the lock was loose. He nonetheless engaged all of the locks on the doors, thereby evidencing a reasonable belief that the vehicle was secure. Moreover, Officer Veloz pulled on the back doors and was unable to open them. Therefore, to open the vehicle's back doors, even if we assume that the lock on the back doors was loose, the evidence shows that significant pressure or force would be required. Where, as here, there is evidence that only the use of force can open a secured door, the requirements of section 459 have been met.

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.